

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

JUL 27 2018

JEFFREY P. COLWELL
CLERK

Civil Action No.

18-CV-00952-RPAB-MJW

(To be supplied by the court)

Douglas C. Lehman, Plaintiff

v.

Brian McKinnon,

Sgt Jacques,

C.O. Mc Carroll,

, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Douglas Corey Lehman DOC# 107084 CSP BOX T77 Canon City
(Name, prisoner identification number, and complete mailing address) CO 81215

(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Brian McKinnon, Correctional Officer
(Name, job title, and complete mailing address)

Limon Correctional Facility 49530 South Hwy 71 South, Limon
Colorado
CO 80826

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

He was at work at Limon Correctional Facility.

Defendant 1 is being sued in his/her individual and/or official capacity.

Defendant 2: Sgt. Jacques Correctional Officer for CDOT
(Name, job title, and complete mailing address)

Limon Correctional Facility 49030 Colorado Hwy 71 South, Limon, CO
80826

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

He was working at Limon Correctional Facility

Defendant 2 is being sued in his/her individual and/or official capacity.

Defendant 3: C.O. McCarroll Correctional officer for CDOT
(Name, job title, and complete mailing address)

Limon Correctional Facility 49030 Colorado Hwy 71 South, Limon, CO
80826

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

He was at work at Limon Correctional facility.

Defendant 3 is being sued in his/her individual and/or official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

- 42 U.S.C. § 1983 (state, county, and municipal defendants)
- Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal defendants)
- Other: (please identify) _____

D. STATEMENT OF CLAIM(S)

Claim One: Brian McKinnon violated my 8th Amendment right. EXCESSIVE FORCE

Supporting facts:

On February 7, 2017 I was involved in a Staff assault on Brian McKinnon at Limon Correctional Facility in the chashall/side 1. This resulted in me being % sprayed by Sgt. Jaques to regain control of me. At this time, after being sprayed twice by Sgt. Jaques I give up my assault on McKinnon, I walk 10 to 15 feet away and lay on my stomach on the ground and let Sgt. Jaques and C/o McCarroll restrain me by putting me into hand cuffs and leg shackles where I remain motionless and silent with each of these 2 officers on each side of me awaiting transport to RHU. Now after about two

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minutes of being restrained like this, and with clear control and order having been restored I'm assaulted by Brian McKinnon. A clear violation of my 8th Amendment right and a crime under Colorado State law. Now let me be very clear that I'm not talking about any of the force that McKinnon tryed to use, or did use during my assault on him. Nor am I talking about Sgt Jaques use of %c Spray on me during my assault prior to me giving up and being restrained.

I'm talking about when McKinnon gets up from the floor where he was laying in the fetal position protecting him self. And can be seen collecting his wits, then retrieving his lost ball cap and putting it back on, then retrieving his lost can of %c Spray and reholstering it, then observing that I'm laying 10 to 15 feet away on the other side of a dinning table. On my stomach, motionless and silent and in both hand and leg shackles with Sgt Jaques and Mc Carroll knelling down on either side of me with one of their hands on each of my arms and their weapons

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reholstered. Clearly no longer a threat and clearly under their control. When he calmly walks over to us and finds him self the best position to lean around the two officers so that he can spray me. Once he finds this spot he calmly unholsters his O.C. Spray and Sprays me plain blank in the face before reholstering it. Now McKinnons actions at this time was done to maliciously and sadistically cause harm and nothing more.

The 8th amendment forbids "cruel and unusual" punishment and is probably the most important amendment for prisoner. It has been interpreted to prohibit excessive force and guard brutality.

The Rule: A use of force is excessive and violates the 8th Amendment when it is not applied in an effort to maintain or restore order but is used to maliciously and sadistically cause harm. Where a prison official is responsible for unnecessary and wanton infliction of ~~balanced~~ Pain, the 8th Amendment has been violated.

"Excessive Force" by a prison guards constitutes cruel and unusual punishment. In a very important

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Supreme Court Case called Hudson v McMillian, 503 U.S. 1
(1992) the court found a violation of the 8th amendment when prison officials punched and kicked a prisoner, leaving him with minor bruises, swelling of his face and mouth and loose teeth. The court held that a guards use of force violates the 8th amendment when it is not applied "in a good faith effort to maintain or restore discipline" but instead is used to maliciously and sadistically cause harm.

"Excessive force" is any physical contact by a guard that is meant to cause harm, rather than keep order!

To decide what force is excessive, judges consider:

- ① The need for force. At the time of McKinnons actions there was no need for force at all. Order was already restored.
- ② Whether the amount of force used was reasonable given the need. Any force at this time was unreasonable since there clearly was no need.
- ③ How serious the need for force appeared to the guards. It was clear order was restored since I was in restraints, and the 2 officers had their own weapons put up. Also McKinnon reholstered his own OC Spray once he got back up to his feet. I was also

10 to 15 feet away from McKinnon, Not unless & silent, in cuffs.

⑤ How badly you were hurt.

I was in extrem pain, I had gas in my mouth that made my throat so raw it was painful to eat or drink anything. Even swallowing was very painful for a week. Since it got in my stomach, I had great stomach pain for a week as well. My nose, lungs burned for 5 days and it was painful to just breath. My eyes burned for about a week as well. My entire face burned for 2 to 3 days and the skin was so raw I couldn't touch it with out it causing great pain. Not only was it physically painful but mental. I suffer great panic attacks now when ever I smell % Spray. I have great ~~anxietee~~ anxiety when ever I'm put into hand cuffs at all now. I have bad dreams where I wake up in a cold sweat, heart racing about being sprayed while restrained all over again.

Also in the Constitutional Rights of prisoners under Justification for use of force it states that keeping order does not mean any thing do gose. Force that is unnecessary or excessive to the need may still be unconstitutional. It goes on to say that

If prison officials use Substantial force after you have stopped, been stopped from what ever you where doing or when you have been put into restraints or locked in a cell their actions may be unconstitutional. At the time of McKinnons actions I had clearly stopped assaulting him, been stopped by Sgt Jagges as well as given up my self, I had also been clearly put into hand and leg restraints as well. Further more it goes on to state that just because one does not suffer broken bones, life threatening trauma it doesn't mean you where not hurt. Only that through good graces you where not hurt worse. And this being the ~~case~~ case doesn't make the prison officials actions less unconstitutional or their force any less excessive. So just because I was not hospitalized by McKinnons actions doesn't mean I wasn't injured. You can not get % sprayed and not get injured, let alone plain blank in your face.

Mckinnon knew his actions at this time where wrong because he has years on the job using force properly. Also extensive training from Doc on the proper use of force and the reporting of such uses of force. There is no way that at the time of his actions he didn't know he was not only violating Doc policy, but he was breaking the law and my Constitutional rights, the further shows he knew what he did was unconstitutional because he hide's his actions when he doesn't report his use of force. He doesn't say anything to anyone at any time. If you felt you acted in good faith, you would report your use of force. If you were where not wrong and you didn't know you where wrong you wouldn't hide your actions. However his actions here are clearly captured on the Chowhall video footage. This all clearly show Mckinnon knew his actions where illegal, and once committed, his actions had to be hidden, disqualifying him from immunity.

Through Brian McKinnons extensive DOC training he clearly knew or should have known that his actions were clearly excessive to the need at the time, and fell outside the color of law. And if he thought they where excessive or not he knew or should have known any use of force was to be reported by him, as well as the two fellow officers which is was not. And he fails to report there failure to report his use of force in clear violation of the Law, and the 8th amendment.

10. STATEMENT OF CLAIM(S)

CLAIM TWO:

Sgt Jaques fails to report the excessive force of Brian McKinnon, or protect me from the assault at his hand.

Supporting Facts:

On Feb 7, 2017 On Side 1

of Limon Correctional facility Chowhall Sgt. Jaques witness
a assault of a Inmate by a fellow officer and fails
to report it. As a crime under Colorado State law for
any one acting under the color of law to not report
another person who also is acting under the color of
law who is actively in the commission of a crime.
It's also against Colorado State law to not report
another officers use of excessive force. Sgt Jaques
having extensive training in the use of force
DOC Clearly knew that Brian McKinnon had
used excessive force on Douglas C. Lehman when
Sprayed Mr. Lehman. Plant blank in his face while he
was lying on the ground.

a crime had been committed, and that two fellow Officers failed to report this crime. And makes a informed choice to aid them in the covering up of these crimes. And in so doing knew he to was committing a crime, also a violation of my 8th Amendment and Constitutional rights as a prisoner.

D. STATEMENT OF CLAIMS

CLAIM THREE: C/o McCarroll fails to report McKinnons Excessive force. Fails to report Sgt Jaques failure to report this Excessive force. Fails to protect me from McKinnons Assualt, violating my 8th Amendment.

Supporting Facts! On Feb 7, 2017 while under the direct control of C/o McCarroll and Sgt Jaques I was assualted by Brian McKinnon a fellow correctional officer at Liman Correctional Facility. This happend on Side 1 of LCF Chowhall. At the time of the assault I was in hand & leg irons, lying motion and silent on the floor on my stomach. Clearly no longer a threat, with clear control and order restored for several minutes when McKinnon accomplishes his assault on me by spraying me plant blanke in the face with 0% spray. C/o McCarroll at this time was knelling down on the side of me with one

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hand on my arm, a clear witness to this event, this event was clearly excessive force, in the form of a assault and C/O McCarroll makes a deliberate choice to not report it in Incident #985481. Or report it to his SUPERVISORS or any statements in my criminal Discovery. A clear choice to actively aid in the covering up of these events. Its a crime to not report the use of force, or the use of excessive force by a fellow officer, which he does here, as well as fails to report Sgt. Jaques failure to report it as well. Its a crime to not report your knowledge of another officers involvement in the commission of a crime. C/O McCarroll Shows he knows how to report the use of force since he includes his ~~own~~ account of events in his Incident report #985481. Yet fails to be truthful, or include the excessive force that happens. In this he shows he knows how to, and that he is supposed to, and had the opportunity to do so, yet choose to not do it. Through his DOC training he was taught the proper use of force and how to report its use. He learned what excessive force is and looks like. And was taught the

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laws governing its use by fellow officers and himself.
And all the laws when you fail to report it. Yet he
choose's ~~me~~ to not report McKinnons excessive force.
Even if he didnt think it was excessive he was
Supposed to report it, yet dosent. Or report Sgt Jaques
failure to report it. Through his Doc training
Yo McCarroll Knew that McKinnons action at this
time couldnt be construed as a good faith
effort to restore order or discipline since I had
been laying motionless & silent for 2 minutes
in hand cuffs. And neither McCarroll or Jaques had
their weapons out, so when McKinnon sprays me
its clearly for the sole purpose to Maliciously
and Sadistically CAUSE harm. Through all his Doc
training he would have known or should have known
known this was excessive force and violated my
Constitutional rights as a prisoner. And yet choose
to be a willing participant in the cover up, ~~make~~
making him a responsible party in the violation
of my 8th Amendment rights. It Should be noted
that his account of events that he did report are

not Supported by the video footage or Sgt Jaques am report of events that day.

Yo McCarroll clearly knew or should have known McKinnons actions where illegal and unconstitutional. He knew or should have know that he has a responsibility to report any use of force, or the use of excessive force by himself or other officers. He knew or should have known that the failure of McKinnon & Sgt Jaque to report these events was against the law, and that he would be in violation himself of the law if he fail to report their failure.

And that in his choice to not report any of this, he would be aiding and actively participating in these crime, him self. And that his effort here were solely done to help protect McKinnon from being held accountable for his excessive force that he used.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): _____

Docket number and court: _____

Claims raised: _____

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) _____

Reasons for dismissal, if dismissed: _____

Result on appeal, if appealed: _____

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

Yes No (check one)

Did you exhaust administrative remedies?

Yes No (check one)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

150,000 and 50,000 in punitive Damages,
from each Defendant. And the loss of
employment with in ~~Colorado Dept. of~~
The Colorado Dept. of
corrections.

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Corey Lehman
(Plaintiff's signature)

7/22/18
(Date)

(Form Revised December 2017)

Douglas C. Lehman # 107084
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FACILITY *ORTIC* DATE REC'D *7-20-18*
STAFF LAST NAME *107084 Lehman* ID# *INT*
DOC# OFFENDER LAST NAME INT *DCL*